

Appl. No. : 10/670,958
Filed : September 25, 2003

REMARKS

In the outstanding Office Action, the Examiner has rejected Claims 1-20, 23-69, 71, and 75, objected to Claims 21, 22, 70, 72-74, and 76-79, and allowed Claims 80-82. Applicant would like to thank the Examiner for the timely allowance of Claims 80-82.

Claims 1, 39, 44, 49, 58, 64-66, and 71 have been amended, and Claims 36 and 48 have been canceled. No new matter has been added. Thus, Claims 1-35, 37-47, and 49-79 are presented for further examination. Reconsideration and allowance of all Claims 1-35, 27-47, and 49-82 in light of the present remarks is respectfully requested.

Rejections Under 35 U.S.C. § 102(b)

The Examiner has rejected Claims 1-3, 8-9, 14-15, 17-18, 23, 25-26, 28-29, 31-32, 35-36, 39, 47-48, 50, 54, 58, 65-68, and 71 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,833,332 to Robertson, Jr., et al.

In regard to Claims 1, 39, 58, 65, 66, and 71, the Examiner stated that Robertson discloses a scanning fluorescent detection system including all of the features of the independent claims. In regard to claim 36, the Office Action states that Robertson "discloses everything claimed, as applied above, in addition the first detector is positioned on an axis different from an axis of the excitation emission and the axis of the first sample emission is the same as an axis of excitation emission (see Fig. 2)."

However, as noted above in the Summary of Interview, the Examiner agreed that Robertson does *not* describe the feature recited in Claim 36. In addition, independent Claims 1, 39, 58, 65, 66, and 71 have been amended to recite a feature similar to that recited in Claim 36 as examined. Accordingly, Applicant respectfully submits that the prior art of record fails to describe every element as recited in each of the independent claims, and therefore these claims are in condition for allowance.

Because Claims 2-35, 37-43, 59-63, 67-70, and 72-79 depend from Claims 1, 39, 58, 65, 66, and 71, pursuant to 35 U.S.C. § 112, ¶ 4, they incorporate by reference all the limitations of the claim to which they refer. It is therefore submitted that these claims are in condition for allowance at least for the reasons expressed with respect to the independent claim, and for their other features.

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Rejections Under 35 U.S.C. § 103

The Examiner has rejected Claims 1, 30, 37-38, 44-46, 58, and 62-64 under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of U.S. Patent No. 5,470,714 to Kleinfeld.

As discussed above, independent Claims 1, 44, 58, and 64 have been amended to recite a feature that is not described in Robertson. As recognized by the Examiner, “Kleinfeld does not disclose the particular apparatus for the measurement [of fluorescence],” and therefore Kleinfeld does not cure the feature missing from Robertson. Thus, Applicant respectfully submits that the prior art of record, either alone or in combination, fails to teach or suggest all of the elements recited in each Claim 1, 44, 58, and 64. Accordingly, Applicant respectfully submits that Claims 1, 44, 58, and 64 are in condition for allowance.

Because Claims 2-35, 45-47, 49-57, and 59-63 depend from Claims 1, 44, 58, and 64, pursuant to 35 U.S.C. § 112, ¶ 4, they incorporate by reference all the limitations of the claim to which they refer. It is therefore submitted that these claims are in condition for allowance at least for the reasons expressed with respect to the independent claim, and for their other features.

Conclusion

Applicant has endeavored to address all of the Examiner’s concerns as expressed in the outstanding Office Action. Accordingly, amendments to the claims for patentability purposes pursuant to statutory sections 102, and/or 103, the reasons therefore, and arguments in support of the patentability of the pending claim set are presented above. In light of these amendments and remarks, reconsideration and withdrawal of the outstanding rejections is respectfully requested.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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